

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON WEDNESDAY, THE 15<sup>TH</sup> DAY OF FEBRUARY 2023**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO: FCT/HC/CV/1891/2021**  
**MOTION NO.: M/870/2022**

**BETWEEN:**

**1. SAMUEL ODEJOTOR OROGHI**  
**2. VON HOUSE FORTH ESTATES LTD** **CLAIMANTS**

**AND**

**1. HON. MINISTER OF FEDERAL CAPITAL TERRITORY**  
**2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY** **DEFENDANTS**

**RULING**

By an Originating Summons dated the 29<sup>th</sup> of March, 2021 but filed on the 5<sup>th</sup> of August, 2021, the Claimants seek the determination of the following questions: -

- 1. Whether the Defendants' ground of revocation that "the 1<sup>st</sup> Claimant plot known as Plot No. CD 80 of about 1.5 hrs (sic) covered by Kuje Area Council offer of terms of grant/conveyance of provisional approval dated the 13<sup>th</sup> day of March 2003 situate at Barwa layout Abuja fall the federal capital city (sic)" contained in the defendant's notice of revocation is a ground of revocation under Land Use Act.*
- 2. Whether the Defendants' said notice and the ground thereof "that the 1<sup>st</sup> Claimant's said land within Barwa layout known as Plot No. CD 80 of about 1.5 hrs (sic) covered by Kuje Area Council offer of terms of*

*grant/conveyance of provisional approval dated the 13<sup>th</sup> day of March, 2003 fall (sic) within the federal capital city (FCC)” is not wrongful, unlawful, illegal, null and void cannot subtract allodia rights of the plaintiffs and exercise of same over the property.*

Upon a determination the issues which the Claimants formulated above; they seek the following reliefs: -

- 1. A Declaration that the 1<sup>st</sup> Defendants’ ground of purported revocation that “the 1<sup>st</sup> Claimant’s plot known as Plot No. CD 80 of about 1.5 htrs (sic) covered by Kuje Area Council offer of terms of grant/conveyance of provisional dated the 13<sup>th</sup> day of March, 2003 situate at Barwa layout Abuja fall within the federal capital city (FCC)” contained in the defendants’ notice of revocation is not a ground of revocation under the Land Use Act.*
- 2. A Declaration that the Defendants’ notice of revocation and the purported ground thereof “that the 1<sup>st</sup> Claimant’s said land within Barwa layout known as Plot No. 80 of about 1.5htrs (sic) covered by Kuje Area Council offer of terms of grant/conveyance of provisional approval dated the 13<sup>th</sup> day of March, 2003 fall within the federal capital city (FCC)” is wrongful, unlawful, illegal and void and therefore cannot subtract the allodia rights of the plaintiffs and exercise of same over the property.*
- 3. A perpetual order restraining the defendants either by themselves, their agents, servants, privies and person or persons acting for and or on their behalf from tampering in any way whatsoever with the allodia rights of the 1<sup>st</sup> Claimant and exercise of same over and in respect*

*the said property on the pursuant (sic) to the defendants' said notice and the ground thereof.*

*4. The cost of the suit.*

Upon being served with the originating processes in this suit, the Defendants, on the 30<sup>th</sup> of June, 2022, filed a Notice of Preliminary Objection challenging the competency of the suit. In the Notice of Preliminary Objection, the Defendants seek the following reliefs:-

- 1. An Order of this Honourable Court striking out the Claimant's Originating Summons for being irregular, incompetent, fundamentally defective and for constituting an abuse of the processes.*
- 2. An Order of this Honourable Court converting the Claimant's Originating Summons as constituted to a Writ of Summons for the matter to be heard and determined on the merit due to the contentious nature of the legal issues involved/raised in the Originating Summons.*
- 3. And for such further or other Orders as the Honourable Court may deem fit to make in the circumstances of this case.*

Accompanying the Notice of Preliminary Objection are an 8-paragraph affidavit with SaiduWodi as the deponent and a written address which embodies the written submissions of the Counsel for the Defendants in support of the Notice of Preliminary Objection. The grounds upon which the Notice of Preliminary Objection is predicated are as stated in the affidavit in support of the Notice of Preliminary Objection. It is the case of the Defendants that the suit of the Claimants being one for declaration that the ground for the purported revocation of the title was unlawful and wrong, the

suit ought to have been commenced by way of a Writ of Summons and not by an Originating Summons, considering that the suit and the reliefs sought therein are contentious.

Responding to the Notice of Preliminary Objection, the Claimants, on the 20<sup>th</sup> of July, 2022, filed a 14-paragraph counter-affidavit which Jonas Umeh, a Counsel in the law firm of Kanu-Kanu & Co, Solicitors to the Claimants, deposed to. Generally, the deponent, after denying certain paragraphs in the affidavit in support of the Notice of Preliminary Objection, insisted that the plot which is the subject matter of the present suit was duly allocated by the Honourable Minister of the Federal Capital Territory. He maintained that it was wrong for the Defendants to revoke the title of the Claimants and allocate same to another citizen for the same purpose.

On the 6<sup>th</sup> of December, 2022, parties adopted their processes and this Court adjourned for Ruling. In the written address in support of the Defendants' Notice of Preliminary Objection, learned Counsel formulated a sole issue for determination, to wit: *"Whether the Claimant's Originating Summons as constituted being for declaration that the 1<sup>st</sup> Defendant's ground of purported revocation is not a ground of revocation ought to have been commenced by way of an Originating Summons instead of a Writ of Summons."* In his submissions on this issue, Counsel argued that Originating Summons could be used only in circumstances where there are no disputes on the questions of facts or the likelihood of such disputes. He referred this Court to Order 2 Rule 3(1) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. He also cited and relied on the cases of ***His Excellency Chief S. P. Alameiyaseiigha v. The Hon. Chief Judge of Bayelsa State & 10 Others (2007) 7 NWLR (Pt.***

**1034) 524 at 589, paras D – E; Akujobi David Osuagwu v. Herbert Ohuabunwa Emezi & 3 others (1998) 12 NWLR (Pt. 579) 640 at 649 paras F – G** among other cases. He concluded that it would be impossible for the Court to resolve the controversy in this suit without a finding on whether the Claimants' title flowed from the 1<sup>st</sup> Defendant which finding, he submitted further, would necessarily involve the examination and evaluation of evidence from witnesses and not merely on the basis of affidavit evidence. He urged the Court to grant the reliefs sought.

Responding to the legal submissions of learned Counsel for the Defendants, learned Counsel for the Claimants in his written address formulated three issues for determination which are, *“(1) When will a suit be commenced by way of Originating Summons; (2) Whether the suit of the Claimants/Respondents as presently constituted before this Court is not one which can be effectively determined by the Court by way of Originating Summons; (3) What will the Court do if this suit was brought by way of Originating Summons instead by Writ of Summons.”*

In his submissions on Issue 1, learned Counsel referred this Court to Order 3 Rules 1 and 2 of the Rules of this Court and argued that an action may be commenced by way of an Originating Summons if the right of the Claimant is depended upon the construction of a written instrument. On Issue 2, he submitted that the suit of the Claimants as presently constituted was one which could be commenced by way of an Originating Summons since it was founded upon the construction of the Defendants' notice of revocation and sections 28 and 44 of the Land Use Act. On the third Issue, learned Counsel submitted that the proper order this Court should make where it finds that the suit ought to have commenced by way of a Writ of

Summons and not by way of Originating Summons is to order parties to file pleadings and not to strike out the case. He cited the case of ***Emezie v. Osuagwu & Others (2005) 3 SCMJ 30 at 33 Ratio 4*** and prayed the Court to dismiss the application.

In determining this Notice of Preliminary Objection, this Court considers all the issues the parties herein have formulated. All the issues can be summarized in this sole issue: “***Whether Originating Summons was not the proper mode of commencement of the suit of the Claimants considering the nature of the reliefs sought therein?***” In resolving this issue, this Court must consider the provisions of the Rules of this Court as it concerns modes of commencement of action. The High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 provides for the nature of action that can be commenced by each type of originating process. Order 2 Rule 2(1) provides that:-

***(1) The under listed proceedings shall be commenced by writ except any applicable law requires that the proceedings shall be begun otherwise, than by writ:***

***a. Proceedings in which claimant claims:***

***(i) Any relief or remedy for any civil wrong or***

***(ii) Damages for breach of duty, whether contractual, statutory or otherwise, or***

***(iii) Damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or in respect of damage or injury to any property.***

***b. Where the claim is based on or includes an allegation of fraud, or***

***c. Where an interested person claims a declaration.***

On the other hand, Order 2 Rule 3 of the Rules of this Court stipulates the nature of cases most appropriate to be commenced by way of Originating Summons. The Rule provides as follows:-

***(1) Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.***

***(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.***

By virtue of the above provisions, each mode of commencement of action has the categories of actions it is meant to serve. Thus, while the Writ of Summons is best suited for suits where there are disputes as to the facts and, as a consequence, are acrimonious in nature, the Originating Summons are most appropriate for cases where there is no dispute as to the facts, but the disputes relate only to the interpretation of the written instrument applicable to the parties to the dispute. The written instrument could be a deed, a will, an enactment or, indeed, any written instrument

which contains the rights and obligations of the disputing parties. What matters is that the cause of action must have arisen from a disagreement over the proper construction to be accorded the written instrument.

There have been judicial pronouncements on modes of commencement of action. For instance, in *Ezeigwe v. Nwalulu (2010) 4 NWLR (Pt. 1183) 159 S.C. at 215, para B*, the apex Court held that “**The mode of commencement of action is an indispensable aspect of our civil procedure, hence various courts have it embodied in their Civil Procedure Rules.**” The Supreme Court was quite emphatic on this subject in the case of *Riok (Nig.) Ltd. v. Incorp. Trustees, N.G.F. (2022) 16 NWLR (Pt. 1857) 725 S.C. at 779, paras E – F* when it held that the subject matter of a suit determines the mode of commencement of the suit. Speaking further *at page 780, para B*, the Court held that “**Where a procedure for carrying out a matter is clearly spelt out in a law, a party has no choice but to comply fully with the procedure. Failure on the part of a plaintiff shows that he has not fulfilled the conditions precedent for commencement of such action.**” See also in this regard *Kwara State Govt. v. Guthrie (Nig.) Ltd. (2022) 13 NWLR (Pt. 1846) 189 S.C. at 207, paras. A-C*.

The Claimants in this suit are seeking for declaratory and injunctive reliefs in relation to the Defendants’ purported revocation of the title of the 1<sup>st</sup> Claimant in respect of Plot No. CD 80 measuring about 1,500 hectares lying and situate at Barna Layout, Kuje, Abuja which title is covered by the Kuje Area Council Offer of Terms of Grant/Conveyance of provisional approval dated the 13<sup>th</sup> day of March, 2003. Specifically, the Claimants want this Court to hold that the purported revocation was invalid and

unlawful, same having being made in violation of sections 28 and 44 of the Land Use Act. On the other hand, the contention of the Defendants is that the suit was not initiated by the proper mode of commencement, in view of the fact that the Defendants are challenging the purported allocation of the plot of land by the Kuje Area Council, and, besides, the suit of the Claimants was contentious and ought to have been commenced by way of a Writ of Summons.

The question, therefore, is whether the suit of the Claimants arose from a dispute over the interpretation of any written instrument. The Defendants do not think so. In their written address, the Defendants contended that “*the relief of the Claimants borders on declaratory reliefs despite how it was couched*” and “*pertains to title/ownership of Plot No. CD 80 Barwa Layout, Abuja.*” They added that “*there is no way this Honourable Court will safely make findings on the reliefs claimed by the Claimant without first and foremost making a finding as to whether the Claimant’s title emanates from the Defendant ab initio... the court must make such declarations based on evidences adduced by both parties to show how each acquired interest thereto and which of the interests ranks uppermost in the circumstances of this case.*” The Claimants believe so. In the written address in support of their counter-affidavit in response to the Defendants’ Notice of Preliminary Objection, learned Counsel posited that “*the entire suit of the claimants/respondents is for the interpretation and determination of the rights of the claimants/respondents from the documents and law upon which the suit of claimants/respondents is founded. The document is the defendants/applicant’s purported notice of revocation. The law is the Land Use Act.*”

I have reflected on the reliefs the Claimants seek in this suit. I have reproduced them at the beginning of this Ruling. I will not reproduce them again. It is important to state that the suit seeks the determination of the questions contained on the face of the Originating Summons. I have accorded more than a passing attention to the questions formulated therein. It is my considered view, and I so hold, that the questions did not disclose that the rights of the Claimants are dependent upon the determination of any question of construction arising under any written instrument.

I have warned repeatedly that Counsel should desist from couching actions for declaration of title to land as one for construction of the documents of title simply because they want to truncate the length of time the Court would have ordinarily spent on taking *viva voce* evidence. I agree with the Defendants that this suit is too contentious a suit to be heard on the Originating Summons. The reliefs sought therein cannot be granted on the basis of affidavit evidence alone.

The Rules of this Court gives the Court a reasonable degree of latitude within which to navigate if it encounters circumstances of this nature. Order 2 Rule 3(3) provides that “***The court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons but may make any such orders as it deems fit.***” On the other hand, Order 5 Rules 1(1) and 3 provide that:

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***(1) Where in beginning or purporting to begin any proceedings there has by reason of anything done or left undone, been a***

***failure to comply with the requirements of these rules, such failure shall not nullify the proceedings.***

***3. The court shall not wholly set aside any proceedings or writ or other originating process by which they were begun on the ground that the proceedings were required by any of this Rules to be begun by an originating process other than the one used.***

In view of the cumulative and combined effect of Order 2 Rule 3(3) and Order 5 Rules 1(1) and 3 of the Rules of this Court, therefore, the Notice of Preliminary Objection succeeds in part. Relief Number One which seeks an Order of this Court striking out the Claimant's Originating Summons for being irregular, incompetent, fundamentally defective and for constituting an abuse of process of this Honourable Court is hereby refused. Relief Number 2 which seeks an Order of this Honourable Court converting the Claimants' Originating Summons to a Writ of Summons for the matter to be heard and determined on the merit is hereby granted. All the parties herein are hereby ordered to amend their processes accordingly. They are also hereby ordered to file and exchange their pleadings pursuant to Order 15 Rule 1 of the Rules of this Court.

This is the Ruling of this Court delivered today, the 15<sup>th</sup> day of February, 2023.

**HON. JUSTICE A. H. MUSA  
JUDGE  
15/02/2023**